statement of his colleague well knowing it was false. I think they did great disservice to the people they represent when they acted as they did. I do not think Mr. Rajah knew that the report was a false one when he decided to print it, but I do think he printed it recklessly not caring whether it was true or false. His intention or motive in so doing is immaterial except on the question of damages.

I further hold that Exhibts A and B are in fact defamatory of Mr. Palmer, they tended to lower him in the estimation of right-thinking men in that in his capacity as President of the United Planting Association of Malaya and as a person of public affairs he acted in an unbecoming and discreditable way by staging a walk-out during the meeting between the parties concerned and that he had abandoned negotiations which he had undertaken to take part in. They accuse him and others quite wrongfully of unco-operative conduct which the Commissioner of Labour is said to have described again quite wrongfully as deplorable. They depicted him as an irresponsible person unfit to hold the offices he does hold. There is no new matter in Exhibit B the issue of June 8th save that the Defendants try to support their statement that the plaintiff "staged a walk-out" by quoting Mr. Moorthy as staying that Mr. Palmer never said at Thursday's meeting that he would be leaving early on Friday nor that when he left the meeting on Friday he asked those present to excuse him in order that he might attend to other business. It is clear from this paragraph that the Defendants intended to convey by the words "stages a walk-out" something very different from the fact that the Plaintiff left the meeting in an ordinary and natural manner. Further, Mr. Rajah admits the headlines contain the important matter and how could it possibly be important news to say even of Mr. Palmer that he walked out of a meeting in a perfectly natural and reasonable manner.

It follows from my findings of fact that the defence of fair comment fails. Mr. Palmer has the right like every other man to have the estimation in which he stands in the opinion of others unaffected by false statements to his discredit and the law presumes that some damage will flow in the ordinary course of things from what has been described by the late Lord Justice Bowen in the case of *Ratcliffe v. Evans*[2] as "the mere invasion of his absolute right to reputation." The damage he has sustained depends to some extent on the estimation in which he was previously held. With reference to his solicitors' letter of 10th June, 1947, to the Malaya Tribune Press I must say that whatever Mr. Palmer intends to do with such damages as he may get is no concern of mine. I am, however, entitled to take into consideration Mr. Palmer's conduct, the nature of the libel, the mode and extent of publication, the absence of any retraction or apology and the whole conduct of the defendants up to the present time. The Defendants admit the newspapers concerned have a wide circulation throughout the Malayan Union and there has been no retraction, and I think the proprietor of a newspaper with a large circulation must be liable for greater damages than one with a more limited circulation. The Defendants are co-defendants and there must be one verdict and one judgment against them both for the total damages awarded. I therefore give judgment for the Plaintiff against the first and third defendants and assess the damages at six thousand dollars with costs to be taxed.

As I am satisfied the words were injurious to the plaintiff and from the attitude of the defendants there is some reason to apprehend further publication, I grant the Plaintiff an injunction to restrain the Defendants from further publishing the words complained of.

I also order that the Plaintiff pay the costs of the second defendant up to the time of withdrawal. I certify for two counsel.

Order Accordingly.

RE LEE KIM SOO, DECEASED.
THE BRITISH MALAYA TRUSTEE AND EXECUTOR CO., LTD. v. NEO BAH TAH AND OTHERS.

[Orig. Civil Juris. (Laville, J.) December 18, 1947]
[J.B. — Originating Summons No. 72 of 1947]

Probate and Administration Enactment Johore S. 83 (ii) — Application for approval of agreement of sale — No general power of sale in Will — Civil Procedure Code S. 467.

This was an application for the approval of an agreement of sale of certain land, buildings and fixtures belonging to the estate of Lee Kim Soo (deceased). The will gave no general power of sale till the youngest child had reached majority and no evidence was brought to show the necessity for the sale under Clause 21 of the Will which provided that the Trustee should sell such lands as produce no income and are not capable of being profitably developed. The beneficiaries questioned the correctness of the valuation of the property and they further expressed their desire that the estate should be maintained as far as possible as it was left by the deceased.

Held, that no case had been made out for a sale by the Executor either under the powers granted by the

Will or under the discretion given to the Court by Section 83(ii) of the Probate and Administration Enactment of Johore.

Case referred to:—

(1) *Marquis Camden v. Murray* (1880) 16 Ch. 161.

ORIGINATING SUMMONS.

R. L. Eber for the Plaintiff.

P. Hoalim for first Defendant.

D. K. Walters for Infant Defendants.

Laville, J.: —In this Summons The British Malaya Trustee and Executor Company, Ltd., as Executor and Trustee of the will of Lee Kim Soo, deceased, apply to the Court under the provisions of Section 467 of the Civil Procedure Code of Johore for approval of an agreement made between the said Executor and the Sure-Lite Match Co., Ltd., to sell to the latter Company the land held by the Executor under Johore Government Grant No. 9022 and the buildings and some of the fixtures thereon as part of the estate of the said Lee Kim Soo, deceased, for the sum of $95,000/-.

The Summons was issued on 28th August, 1947, and was served on Neo Bah Tah, the 3rd widow of the deceased, and her five minor children, the only beneficiaries affected thereby. Appearance was entered by the widow and the guardian of the minor children. After a hearing on 1-11-1947 the Summons was adjourned to open Court for hearing on 25-11-1947.

On that date Mr. R. L. Eber appeared for the Plaintiff Company and Mr. P. Hoalim for the first defendant, and Mr. D. K. Walters for the minor defendants.

Plaintiff's case was that the Match Factory business carried on as a Company by deceased during his life time had had to be wound up after his death owing to a deterioration in the goods manufactured there and the business has been closed down and machinery sold. The Company paid rent to Lee Kim Soo's estate for the use of the land and buildings used in such business, and as the business was in process of being disposed of, the land and buildings on J. G. No. 9022 were producing no income for the estate and would inevitably deteriorate, and it would be to the interests of all beneficiaries to sell them at the price of $95,000 now.

The first defendant, the widow, queries the conclusion drawn by the Plaintiff that the factory business could no longer be carried on at a profit or rehabilitated, but concedes that under the will the Plaintiff has absolute discretion in matters connected with the match manufacturing business.

She contends that the factory buildings and the land on which they are erected belong not to the business but to the estate of the deceased and are not subject to the absolute discretion of the Plaintiff. This is conceded by the Plaintiff.

Both defendants object to the sale on the following grounds:—

(1) that by the terms of the will the trustees thereof have no power of sale until the date of final distribution mentioned in the will;
(2) that even if they have a power of sale, there should be an enquiry before any order is made into the possibilities of carrying on and rehabilitating the match making business;
(3) that in any event the price of $95,000 is grossly inadequate.

It is clear from the evidence of Mr. O. R. S. Bateman, the partner in the Trustee and Executor Co. who is handling the estate of Lee Kim Soo, that the provisions of his will have been in part carried out and that the defendants are the sole beneficiaries left with any interest that has not yet vested. Clause 16 of the will directs the trustee, when the youngest survivor of deceased's lawful children has attained the age of 21 years, to distribute in kind the shares in the business and to sell and convert into money all other property forming part of the residue of the estate and divide the net proceeds of sale in accordance with a ratio set out previously in the will among the present defendants.

It seems to me clear that this clause of the will precludes the idea of an unfettered power to sell having been granted to the executor: there is no provision for anticipation or power of postponement given by the will and it would appear that this power of sale and conversion comes into being only on the date appointed by the will.

With reference to other possible powers of sale, the only clause of the will which appears to create them is clause 21. This clause authorises the trustee to raise such money as he thinks fit at any time by sale or mortgage of any part or parts of the estate including the immovable property, but this power is only exercisable for the purpose of developing by building on or otherwise improving any lands held by the testator at the time of his death.

There is no evidence in the Plaintiff's affidavits or in his *viva voce* evidence that the Trustees proposed to use the proceeds from the sale of the land J. G. No. 9022 for any such purpose or at all. In my

opinion no power has been made out for Plaintiff under this clause which would justify such a sale as is proposed.

There remains only to consider the last sentence of clause 21 which reads: "I desire my Trustee to sell such lands as produce no income and are not capable of being profitably developed." It is argued for Plaintiff that the sale contemplated is justified by these words. Even if that were so, I am not satisfied by the evidence that the land in question falls into that category: it is true that it is at present producing no income, but can it be said on the evidence that it is incapable of doing so? There seems to be no reason why the buildings should not be leased to match-making companies who might be willing to instal fresh machinery: the land and buildings produced rent-income in this way before: it is also possible that the land and buildings would be suitable, or could be rendered suitable for some other form of business enterprise at a reasonable expense to the estate and so be rendered profit producing. Be that as it may, I am of opinion that the final sentence of clause 21 of the will must be read and interpreted in context with the whole clause. There is no authorisation to sell such lands, but merely a desire and in my view the true construction to be put on this sentence is that, in selecting what lands shall be sold to raise moneys for the improvement of the land estate as a whole, the testator desired that the unprofitable and irredeemable lands should be sold first.

The Court will, as far as possible, give effect to the directions of the testator express or implied, and it is clear from the tenor of the will that the testator's object was to keep the estate intact as far as possible and have it converted into money and distributed only when his last child had attained majority. *Marquis Camden v. Murray*[1] is authority that provided the estate is not diminished, even a profitable sale of any portion thereof will not be authorised if the beneficiaries prefer to maintain it in the condition it was left, and in this case there is evidence that all the beneficiaries reject the proposed sale.

As regards the proposed price to be paid by the Sure-Lite Match Company for the land and buildings, the evidence is that this land was valued for probate in 1934 at $45,000/- by Messrs. Cheong Koon Seng & Co., Ltd., an old established firm of valuers and auctioneers. It is general knowledge that the price of land and houses has risen enormously since then. In January, 1947, the same firm valued this property at $322,000 for the purposes of making the distribution directed under clause 14 of the will. The Plaintiff Company did not at that time contest the valuation which indeed was made at their request. Mr. Bateman states that as the amount of the valuation did not affect the distribution then he did not query it, though he had very strong doubts as to its correctness. At this time it would appear no question had arisen as to the sale of the property, which was mooted about June, 1947. Shortly after a valuation was made at Plaintiff's request by Messrs. Nassim & Co. who reported on 28th July, 1947, that they valued the land and premises at $85,000. In November, 1947, after the initiation of these proceedings, Mr. Brewer, a Singapore Architect of repute, visited the buildings and, though he refused to value them, stated on oath that in his opinion the cost of re-building the main factory would be in the neighbourhood of $120,000/- and the reconstruction of the other buildings would cost $53,000/- a total of $173,000/-, and that in his opinion the whole property, i.e. the land and buildings, is worth very much more than $95,000/-.

In view of the conflict of opinion between these firms, all practising as valuers in or near Johore Bahru, and the great difference in their valuations, all made within the period of less than one year, the Court cannot be satisfied that the proposed price of $95,000/- is one that should be accepted without further and more detailed examination by the Plaintiff.

In view of the above considerations, to wit, that the will gives no general power of sale till the youngest child has reached majority, and the absence of evidence as to the necessity of any sale under clause 21 of the will, together with the uncertainty that the suggested sum of $95,000/- is a valuation that should be accepted if a sale was authorised, and the desire of the beneficiaries to maintain the estate as far as possible as it was left by the deceased, I am of opinion that no case has been made out for a sale by the Plaintiff Executor either under the powers granted under the will or under the discretion given to the Court by Section 83 (ii) of the Probate and Administration Enactment of Johore.

In view of the above, it is unnecessary to consider the claim of the defendants that prior to any approval of sale, enquiry should be directed into the question of match making.

Accordingly there will be no order made on the summons.

The Executor is entitled to come to Court and obtain the advice and instructions of the Court and there is no suggestion that he has acted in any way that makes him personally responsible for the costs of his application: the defendants, too, are entitled to costs. Costs of both parties will therefore come out of the estate.

No Order.

HAJI ABDULLAH BIN MOHAMED v. ABDUL MAJID BIN IBRAHIM AND OTHERS.

[Orig. Civil Juris. (Callow, J.) February 27, 1948]
[Raub — Civil Suit No. 3 of 1947]

Land Code, Section 42 — Claim under resulting trust — Application of Doctrines of Equity — Laches.

In this case the plaintiff claimed that certain land registered in the name of the plaintiff's brother was in fact purchased by the plaintiff and caused to be registered in the name of his brother, as he (the plaintiff) was then in Government employ.

Held, (1) that on the facts the plaintiff had not proved that he purchased the land in the name of his brother under such circumstances as to create a resulting trust; (2) that there was nothing in the case to show that the title of the registered proprietor in this case was defeasible; (3) that the plaintiff had by his conduct barred himself from obtaining the relief he sought.

Cases referred to :—

(1) *Irvine v. Sullivan* (1869) L.R. 8 Eq. 673.

(2) *Brackenbury v. Brackenbury* (1820) 2 Jac. & W. 391.

(3) *S.A.S.P.K. Ramasamy Chetty v. Fan Seng Yew* 1 F.M.S.L.R. 354.

(4) *Dharmaratna v. Dharmaratna* (1939) 8 M.L.J. 310.

CIVIL SUIT.

H. V. Rintoul for the Plaintiff.

Second Defendant in person.

Callow, J. : — The conduct of this cause has not been easy. Mr. Rintoul for the plaintiff conducted his case with admirable propriety and restraint, but the defence with no legal aid was at a great disadvantage. There are four defendants, but only the second appeared to represent all; he was quite unversed in procedure; he admitted he was stupid and ignorant, which was undoubtedly true.

The case for the plaintiff was that in 1916 he purchased the property subject of this action, but as he was then in Government employ — he was a Forest Ranger — he caused the title to be registered in the name of his brother Ibrahim, the husband of the 4th defendant and the father of defendants 1, 2 and 3.

This was done, says the plaintiff, to circumvent regulations which forbade a Government servant to own land. The regulations were not cited, but obviously reference was to General Order 111.

In due course rubber trees were planted and the property worked. The plaintiff states he paid the annual rent.

In 1931 the plaintiff retired on pension, and in 1934 he was instrumental in causing the Power of Attorney (Exhibit G) to be executed by his brother Ibrahim in his (the plaintiff's) favour. From then until the Japanese Invasion the plaintiff worked the land, reaped the economic crops and enjoyed possession and profit.

On the 18th of June 1944 Ibrahim died. At this period the estate was not being worked, but on Re-occupation the deceased's sons commenced to rehabilitate the property claiming title as beneficiaries of the late Ibrahim.

The consequences are this action. The plaintiff maintains that in 1916 he purchased in the same manner another piece of land, lot 842, which he caused to be registered in the name of another brother Ismail. On Ismail's death about 1939 a situation similar to the one in question arose, but the beneficiaries realised the plaintiff's rightful claim and did not resist the transfer to him of lot 842.

The plaintiff further relies on the fact that he has always retained in his possession the certificate of title Exhibit C (of necessity changed in exercise of Ordinance 36/46 to No. 2,322, Exhibit B); that he drew from Government the coupons under the Rubber Supervision Enactment; that he held the licence to store, Exhibit N; that the actual words of the Power of Attorney include powers of sale; and that he, not Ibrahim the registered owner, was prosecuted in 1938 for illegal planting.

The defence is a denial of the resulting trust. The second defendant says the land belonged to his late father, and it is claimed by the defendant beneficiaries.

Clearly the plaintiff must prove strictly his claim, and adduce such preponderance of evidence as would entitle him to judgment. It is a *prima facie* presumption (but rebuttable) that a purchaser intended the grantee to take beneficially (9th Ed. *Underhill's* Law of Trusts and Trustees page 169).